



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

WAGGONER CARR
ATTORNEY GENERAL

July 10, 1963

Honorable Jerry Sadler
Commissioner
General Land Office
Austin, Texas

Opinion No. C- 106

Re: Construction of Senate
Bill 318, Acts of the
58th Legislature, Regu-
lar Session, relating
to the removal of the
ex officio membership
of the Attorney General
on various State boards
and commissions.

Dear Mr. Sadler:

You have requested our opinion on the construction of Senate Bill 318, Acts of the 58th Legislature, Regular Session, wherein the Attorney General is removed from the School Land Board as an ex officio member. Your specific questions concern the language of Section 5 of the Act wherein it states that paragraph 5 of Section 5 of page 465, Acts of the 46th Legislature, Regular Session, 1939 (codified as Article 5421c-3, Vernon's Texas Civil Statutes) is amended, in view of the fact that paragraph 5 refers to the meetings of the School Land Board, whereas paragraph 3 refers to the membership of the School Land Board. Your specific questions are as follows:

"(1) Can either School Land Board
officially act after the effective date of
Senate Bill 318?

"(2) If so, which Board has the
authority to act?

"(3) When should the Board meet and
how should it select a secretary that is
authorized to certify as to the official
minutes of the Board?"

The School Land Board was created by the provisions of Section 5 of House Bill 9, Acts of the 46th Legislature, Regular Session, 1939, Chapter 3, page 465, at page 475, which was an Act amending House Bill 358, Acts of the 42nd Legislature, Regular Session, 1931, Chapter 271, page 452. Section 5 of the 1939 Act was codified in Vernon's as Article 5421c-3,

Vernon's Civil Statutes. Paragraphs 3, 5 and 6 thereof read as follows:

"3. There is hereby created a board to be known as the School Land Board, and to be composed of three (3) members, namely: the Commissioner of the General Land Office, who shall be chairman, the Governor and the Attorney General."

"5. The School Land Board shall meet on the first and third Tuesday of each month in the General Land Office, where its sessions shall be held and continued until its docket is cleared, subject to recesses at the discretion of the Board. The Board shall select a secretary who shall be nominated by the Commissioner of the General Land Office and approved by a majority of the Board. The Commissioner of the General Land Office is authorized to employ other employees which may be necessary for the discharge of the duties of the Board, and particularly is authorized to employ a geologist and mineralogist, who shall keep informed with reference to the minerals on public school lands and all activities under pending applications and previous leases and sales, and shall report to the Board all information obtained with reference thereto. The employees of the Board shall be deemed to be employees of the General Land Office, and all civil and criminal laws regulating the conduct and relations of the employees of the General Land Office shall apply in all things to the employees of the Board.

"6. The School Land Board shall keep a record of its proceedings to be called its minutes which shall include a docket on which the secretary shall enter all matters to be considered by the Board, the minutes and docket to be subject to inspection by any citizen of Texas desiring to make an examination thereof on payment of such fees as may be prescribed by law for the examination of other Land Office records, the examination to be in all cases in the presence of the secretary of the Board or some

clerk designated for that purpose as prescribed by law. All records and proceedings of the Board shall be records and archives of the General Land Office."

It is noted by the above quoted provisions that paragraph 3 of Article 5421c-3, V.C.S. (paragraph 3 of Section 5 of House Bill 9, Acts of the 46th Legislature, Regular Session, 1939, Chapter 3) creates the School Land Board and provides for its membership; whereas, paragraph 5 of Article 5421c-3 provides for the meeting of the School Land Board, the selection of a secretary and the employment of other employees.

The title or caption of Senate Bill 318, Acts of the 58th Legislature, Regular Session, reads as follows:

"AN ACT removing the Attorney General from the Board for Lease of Eleemosynary and State Memorial Lands, the Boards for Lease of Lands owned by state agencies, Boards or agencies of the State of Texas, the Board for Lease of Texas Prison Lands, the Board for Lease of State Parks Lands, the School Land Board, the Board to sell judgments which cannot be collected, the State Depository Board, the State Tax Board, the Executive Committee of the Texas Traffic Safety Council, the State Board of Trustees for the Employee's Retirement System of Texas, the State Banking Board, the State Board of Canvassers, the Council to expend certain license fees and hunting-boat registration fees and certain fines, the Study Committee to study the development of certain Texas beaches; providing for membership on said Boards or other agencies in lieu of the Attorney General; providing for the expenses of citizen members replacing the Attorney General on said Boards or agencies; amending Article 120 of Subchapter 8 of Chapter 492, Acts of the 52nd Legislature, Regular Session, 1951, relating to the opening and counting of certain election returns by the Secretary of State in the presence of the Governor or Attorney General, by substituting in the place of the Attorney General, a citizen of the state to be appointed by the Governor with the advice and consent of the

Senate, who shall serve for a term of two (2) years; amending Article 4412 of the Revised Civil Statutes of Texas, 1925, by requiring designated assistant attorneys general to attend meetings of these Boards or Commissions upon which the Attorney General formerly served as an ex officio member as of the effective date of this Act; providing for severability; and declaring an emergency." (Emphasis added)

The emergency clause of Senate Bill 318, Acts of the 58th Legislature, Regular Session, the same being Section 20, reads as follows:

"Sec. 20. The fact that the primary function of the Attorney General is to represent the state in all matters where legal advice or judicial proceedings may be required, and the fact that his ex officio duties curtail his availability to act as counsel to these Boards and in many instances place him in the position of making a particular decision as an ex officio member and then subsequently having to defend such action in court create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and said Rule is hereby suspended; and that this Act shall take effect and be in force from and after its passage, and it is so enacted."

A study of the title and emergency clause discloses that it was the intent of the Legislature to remove the ex officio membership of the Attorney General from various State boards and commissions, including the ex officio membership on the School Land Board. Furthermore, the title limits the provisions of Senate Bill 318 to the removal of the ex officio membership of the Attorney General on various State boards and commissions, and provisions necessarily germane thereto. Section 35 of Article III of the Constitution of Texas; Board of Water Engineers v. City of San Antonio, 155 Tex. 111, 283 S.W.2d 722 (1955).

Thus, while the title authorizes an amendment to paragraph 3 of Article 5421c-3, it does not authorize an amendment to paragraph 5 of Article 5421c-3, V.C.S., nor does it authorize the creation of an additional School Land Board. Furthermore, a reading of all the provisions of Senate Bill 318 reveals that it was the intention of the Legislature to amend paragraph 3 rather than paragraph 5.

Section 5 of Senate Bill 318, Acts of the 58th Legislature, Regular Session, reads as follows:

"Sec. 5. Paragraph 5 of Section 5 of page 465, Acts of the 46th Legislature, Regular Session, 1939 (codified as Article 5421c-3 of Vernon's Texas Civil Statutes) is amended to read as follows:

"5. There is hereby created a Board to be known as the School Land Board, and to be composed of three (3) members, namely: the Commissioner of the General Land Office, who shall be chairman, the Governor and one (1) citizen of the state, appointed by the Attorney General with the advice and consent of the Senate, who shall serve for a term of two (2) years.'" (Emphasis added)

In Second Injury Fund v. Keaton, 162 Tex. 250, 345 S.W.2d 711 (1961), it is stated:

"The intention of the legislature in enacting the statute must be ascertained from the language of the statute itself. When that intention has been ascertained by the court, it is our duty to enforce such intent. . . ."

In Patterson v. City of Dallas, 355 S.W.2d 838, 844 (Tex.Civ.App. 1962, error ref. n.r.e.) the Court stated:

". . . It is a fundamental rule of statutory construction that words or phrases in a statute may be supplied, omitted or transposed in order to arrive at legislative intent and an interpretation should not be adopted that would thwart the legislative intent or lead to absurdity, injustice, or uncertainty if such construction can reasonably be avoided. Rogers v. Dallas Ry. & Terminal Co., Tex.

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Civ.App., 214 S.W.2d 160, affm. 147 Tex. 617, 218 S.W.2d 456; Hargrave v. Texas & P.Ry.Co. (Tex.Com.App.), 12 S.W.2d 1009; Tone v. City of Denison (Tex.Civ.App.), 140 S.W. 1189; Roby v. Hawthorne (Tex.Civ.App.), 84 S.W.2d 1108."

Likewise, in Wood v. State, 133 Tex. 110, 126 S.W. 2d 4, 7 (1939), it is stated:

"It is the settled law that statutes should be construed so as to carry out the legislative intent, and when such intent is once ascertained, it should be given effect, even though the literal meaning of the words used therein is not followed. Also, statutes should never be given a construction that leads to uncertainty, injustice, or confusion, if it is possible to construe them otherwise. 39 Tex.Jur., p. 176 et seq., and authorities there cited.
. . . "

In 39 Tex. Jur., 186, Statutes, Sec. 98, it is stated:

". . . obvious errors or mistakes of a clerical, grammatical or typographical nature may be disregarded. Thus an incorrect reference in an amendatory statute, to the act or section amended, may be disregarded where the clear intent of the Legislature was to amend another act or section." See also the cases there cited: Cernock v. Colorado County, 48 S.W.2d 470 (Tex. Civ.App. 1932) quoting 25 Ruling Case Law, Sec. 157, p. 705; Frass v. Darrouzett Ind.School Dist., 277 S.W. 751 (Tex.Civ.App. 1925, error dism.); State v. Gunter, 81 S.W. 1028 (Tex.Civ.App. 1904 error ref.)

In view of the foregoing, you are advised that it is our opinion that the phrase "Paragraph 5" contained in Section 5 of Senate Bill 318, Acts of the 58th Legislature, Regular Session, refers to paragraph 3 of Article 5421c-3, Vernon's Civil Statutes, rather than paragraph 5 thereof. It follows that paragraph 5 of Section 5 of House Bill 9,

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Acts of the 46th Legislature, Regular Session, 1939, Chapter 3, page 465 at page 475, remains unchanged and is not affected by the provisions of Senate Bill 318.

Answering your questions categorically, the School Land Board, created by the provisions of House Bill 9, Acts of the 46th Legislature, Regular Session, Chapter 3, page 465, as amended by Senate Bill 318, Acts of the 58th Legislature, has the authority to officially act after the effective date of Senate Bill 318. Such Board should meet as provided in paragraph 5 of Section 5 of House Bill 9, Acts of the 46th Legislature, Regular Session, codified in Vernon's as paragraph 5 of Article 5421c-3, and the School Land Board is authorized to select a secretary as provided for therein. The secretary of the School Land Board shall keep a record of the proceedings to be called its minutes, which shall include a docket on which the secretary shall enter all matters to be considered by the Board. Article 5421c-3, paragraph 6, V.C.S.

S U M M A R Y

Senate Bill 318, Acts of the 58th Legislature, Regular Session, removes the ex officio membership of the Attorney General from the School Land Board. Section 5 of Senate Bill 318 amends paragraph 3 of Section 5 of House Bill 9, Acts of the 46th Legislature, Regular Session, Chapter 3, codified in Vernon's as paragraph 3 of Article 5421c-3, Vernon's Civil Statutes, rather than paragraph 5 of Article 5421c-3 of Vernon's Civil Statutes. Paragraphs 5 and 6 of Article 5421c-3 remain unchanged.

Yours very truly,

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By 
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APPROVED:

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APPROVED FOR THE ATTORNEY GENERAL

BY: Stanton Stone